IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5586 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KRUPA PETROLEUM SERVICE

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR.SUDHAUSE S. PATEL, the learned AGP for Respondent.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 14/08/2000

ORAL JUDGEMENT

Rule. The otherside waives the service of rule.

2. By this application under Article-226 of the Constitution of India, the petitioner prays for issuance of a writ of mandamus or in the nature of mandamus or any other appropriate writ quashing and setting aside the order dated 30th April, 1998 passed by the Deputy

Secretary, Food and Civil Supplies Department, State of Gujarat holding the same to be illegal, invalid, null and void, unjust, unfair, unconstitutional, arbitrary against the principles of natural justice as well as violative of Article-14, 19(1)(g) and 21 of the Constitution of India etc.

3. The short facts leading the petitioner to prefer this petition may be stated. The petitioner runs the Petrol Pump in the Ellisbridge Area of Ahmedabad City. On 12th July, 1997, the Supply Inspector, Food and Civil Supplies Department carried out surprise inspection of the petrol pump of the petitioner. The Supply Inspector found certain irregularities and seized 6500 ltrs. of petrol.The Additional Collector and Food and Civil Supply Controller, Ahmedabad issued a show cause notice dated 10.01.1996 in exercise of the powers under Sec.6(A) of the Essential Commodities Act, 1955, calling upon the petitioner to show cause as to why the petrol seized should not be confiscated. On 15th February, 1996 a reply to the notice was given. The Additional Collector, then considered the material placed before him and after hearing the petitioner, passed the order of confiscation not for the entire bulk of 6500 ltrs. petrol seized but 15% thereof, which comes to 975 litres. petrol. Being aggrieved by such order dated 12/03/1996 the petitioner preferred the appeal u/s.6(C) of the Essential Commodities Act before the State Government. The Deputy Secretary, Food and Civil Supplies Department allowed the appeal and reduced the quantum of seizure of petrol from 975 ltrs. to 500 ltrs. holding that in sale no malpractice could be noted, and no other serious irregularities or defects were found. The only lapse noted was about the notice being not displayed on the notice board in accordance with the terms and conditions of the licence. Instead of mentioning in the notice the price of one litre petrol, what amount of petrol for specified amount was being sold was mentioned; meaning thereby the petitioner had mentioned what amount of petrol for Rs.10/-, 20/-, 40/or 60/- would be available. Because of this infirmity, the Deputy Secretary found that the order passed by the Deputy Collector confiscating the petrol 975 liters. was on a higher side, and the seizure was required to be reduced. Accordingly, he reduced the amount of seizure of the petrol from 975 liters. to 500 liters. The said order is under challenge in this petition.

4. The learned advocate representing the petitioner submits that the amount of seizure of petrol must be commenstrating with the wrong done, and if the wrong is

found to be technical, the same cannot be placed at par with others wrongs graver in nature under the Act or the Control orders viz: profitaring black marketing or exploitation of the customers or diverting elsewhere the quota meant for the public. In this case there is no such violation of the control orders which can be termed grave or alarming. The public was neither cheated nor deprived of the quota. There was technical breach. No doubt the noticeboard was displayed not in the prescribed for but in different form. The petitioner, therefore, ought not to have been treated at par with others committing serious offence; but ought to have been made free because in every case, seizure of the goods is not a must as the word "may" in Sec.6(1) of the Act is used, which shows that in every case of the breach of the provision of the Act or term or a licence confiscation of goods is not to be resorted to; having regards to the facts and circumstances of the case lenient view has to be taken. For such submission, the learned advocate has placed reliance on the decision of the Supreme Court in the case of N. Nagendra Rao & Co. v. State of Andhra Pradesh, AIR 1994 S.C. 2663.

5. Mr.S. S. Patel, the learned AGP supports the order in question and submits that in the case on hand, when the notice was not in confirmation with the terms and conditions of the licence granted, a wrong of such a nature was done when seizure of 500 ltrs. of the petrol was just and proper, and in no case unreasonable or unduly high. He has, therefore, urged to maintain the order and reject the application.

6. In view of the rival contentions and above stated circumstnaces, the wrong noted qua the notice is with regards to its' form. By a different form the rate per liter was mentioned; but the customer had to calculate. By different form the customers were not cheated or there was no ruse to take more sums from customers. As per the practice convenient to the customers adopted it was mentioned what quantum of petrol for Rs.10/-, 20/-, 40/or 60/- and the like was sold at the rate fixed. Such practice was adopted so as to get rid of time consuming calculation and difficulties owing to odd rate per liter. being experienced because of paucity of small coins & chage etc. In short no alarming wrong has been committed. The Deputy Secretary has also found in his order that in fact no serious wrong or malpractice could be noted, but when breach of the term of the licence qua notice-form was committed confiscation was a must.

7. The question that now arises for consideration is

whether for such technical wrong the order of the confiscation can be termed reasonable and just. In view of the decision of the Supreme Court referred to hereinabove when there is such technical violation minor or trivial in nature, and leading to no evil effect, the same cannot be treated at par with other serious or alarming wrong. The order of consficatioin of 500 ltrs. of petrol is certainly unreasonable and harsh and is required to be appropriately modified, rather than referring the matter back for modification. It would be in the fact of the case just and proper if confiscation is reduced to 100 ltrs.

8. For the aforesaid reasons, the application is partly allowed. The order of confiscation of 500 ltrs. is modified by reducing the confiscation of petrol from 500 ltrs. to 100 ltrs. Rule to the aforesaid extend is made absolute.

14/08/2000. (H. R. Shelat,J)

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